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STATE OF MICHIGAN

COURT OF APPEALS

VIRGINIA KRUCZEK,

Plaintiff-Appellant,

v

FRASER PUBLIC SCHOOLS,

Defendant-Appellee.

UNPUBLISHED
September 04, 2026
11:35 AM

No. 375908
Macomb Circuit Court
LC No. 2023-003463-NO

Before: M. J. KELLY, P.J., and O'BRIEN and LIEVENSE, JJ.

M. J. KELLY, P.J. (*concurring*).

I concur in the result of the majority opinion. It is well-written and accurately states the law as it currently exists with regard to design defects as set down by *Renny v Dep't of Transp*, 478 Mich 490; 734 NW2d 518 (2007). I write separately, however, because I believe that *Renny* was wrongly decided for the reasons stated by Justice MARILYN KELLY in her partial dissent in that case.

Justice KELLY reasoned:

> It is undisputed that [MCL 691.1406] imposes on governmental agencies the duty to "repair and maintain" public buildings.
>
> Accordingly, it defies logic that a governmental agency would be required to maintain a dangerously designed building and be exempted from liability for harm to the public caused by the building's design. It must be presumed that the Legislature intended that the design of public buildings should not cause injury to people. Accordingly, I would hold that the duty to "repair and maintain" public buildings necessarily includes the duty to design safe public buildings.

In addition, she recognized that such an interpretation was supported by longstanding precedent. *Id*. at 509.[1]

The photograph in the majority opinion depicts what I believe is a clear design defect in a public building. It is through this door that the plaintiff—a woman whose mobility necessitated the aid of a walker—was ordered to exit after exercising her right to vote. It does not take a degree in architecture or expertise in code enforcement to quickly come to the conclusion that there is definitely something amiss with this configuration and it should surprise no one that an accident occurred as a result. Because I agree with Justice KELLY that "[t]he duty of safe design is implicit in the duty to maintain safe buildings," *id*., I would hold that the public-building exception to governmental immunity in MCL 691.1406 is cognizable in this case.

Nevertheless, although I believe *Renny* to be wrongly decided, it is well-established that this Court is bound to follow precedent established by our Supreme Court even if we believe that it was wrongly decided or has become obsolete. *State Treasurer v Sprague*, 284 Mich App 235, 242; 772 NW2d 452 (2009). As such, I concur.

/s/ Michael J. Kelly
/s/ Andrew J. Lievense

[1] *Renny* also was criticized recently in *GC by Cavazos v American Athletix, LLC*, 514 Mich 853, 853-862 (2024) (CAVANAGH, J., concurring and WELCH, J., dissenting).